IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 765 of 1997

in

SPECIAL CIVIL APPLICATIONNo 9998 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

MAHENDRABHAI N LAKUM

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Appearance:

1. LETTERS PATENT APPEAL No. 765 of 1997

Mr.Uday Bhatt learned A.G.P. for Appellant No.

MS KJ BRAHMBHATT for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

The appellant-State of Gujarat and other state authority have filed this letters patent appeal in which they have challenged the judgment and order passed by the learned Single Judge dated 19.02.1997 while disposing of Special civil application no. 9998/96 filed by the respondent and as per the said decision the learned single Judge has allowed the petition and the appellants-respondents were directed to take up the question of giving appointment to the petitioner on compassionate ground in accordance with Government resolution dated 06.09.1989 as per earlier order passed by the High Court while disposing of Civil application no. 7971/95 on 05.10.95 and further directed that the decision be taken within a period of one month from the date of certified copy of the order is served upon the concerned respondent and further that such decision shall also be conveyed to the petitioner.

As found from the order passed earlier by the Division Bench on 09.10.1997 the court has issued notice which was made returnable on 22.10.97 and thereafter though the matter was adjourned from time to time, as per order dated 01.04.1998, the court has admitted the appeal and order reads as under :

" Admitted. Our attention was invited to another decision of the learned Single Judge taking contrary view in Special Civil application no. 11723/99 decided on December 22, 1995. In the instant case, in which order was challenged the learned single Judge has allowed the petition by making rule absolute whereas in Special civil application no. 11723/94, another learned Single Judge held that no such order could be passed. In view of this legal position, appeal is admitted. Office is directed to place this matter for final hearing on July 6, 1998."

In view of above order passed, it is unfortunate that till date the appeal remains pending and the direction given by the learned Single Judge while disposing of petition is stayed till date. As per the earlier order of admission if the matter could have been taken up for final hearing, the court could have examined

the contentions raised in this appeal, the court could have finally disposed of the appeal atleast by end of July 1998 or atleast before end of December, 1998. Unfortunately, the matter remains pending. It is also to be seen that the respondent was represented by the advocate by providing legal aid to him by the Legal Aid Committee which suggests that what is the financial condition of the respondent as he is not in a position to engage his own advocate. The respondent-petitioner had approached this court earlier for getting appointment on compassionate ground as he lost his father who died during service.

We have heard Mr.Uday Bhatt learned A.G.P. for the appellant and Ms.Brahmbhatt learned advocate for the respondent appointed by Legal Aid Committee. During hearing, Mr.Bhatt has taken us through the original petition filed by the respondent with the documents attached thereto and the judgment under challenge and affidavit filed by Pradip Shah Dy.Executive Engineer dated 17.02.1997 with the resolution passed by the Government dated 18.07.1994 as per the recommendation of the committee headed by Hon'ble ex-minister Shri Dolatbhai Parmar and while referring to the said resolution though as per the recommendation of the committee a daily wager was made permanent, however, they are only entitled for some benefits and as per the said resolution though the daily wager was made permanent they were only entitled for such benefit by way of pension etc. and the relief for seeking compassionate appointment was not made available and the government is only required to act as per the said resolution and the learned Single Judge has thereby committed error by directing the appellant-authority while considering the case of the respondent-petitioner on his appointment on compassionate ground. Mr.Bhatt had placed reliance upon Clause-15 of the said resolution, and even the daily wager who are made permanent were not to be treated as regular servant of the Government and it is the contention of Mr.Bhatt that the direction given by the learned single Judge is against the policy decision taken by the Government and the order passed by the learned single Judge for giving such direction deserves to be set aside. Mr.Bhatt next urged that even in the petition the petitioner in para 2 has admitted that Naranbhai Lakum father of the petitioner belonging to S.C.community expired on 06.09.1990 while serving with the government who has joined the services on 21.03.63 and thereby he has put in 27 years 9 months and 15 days service and was permanent Clause-IV employee (rojamdar majdoor) under the respondent. Accordingly it is the contention of Mr.Bhatt

that even the petitioner when he approached this court it is his case that his deceased father was a rojamdar majdoor and in view of the scheme and the recommendation of the committee when the policy decision is taken by the government such benefit of compassionate appointment is not available. In short it is the contention of Mr.Bhatt that the deceased father of the petitioner was a rojamdar majdoor and in view of the recommendation of the committee when such persons made permanent employee such persons are only entitled some of the benefits which are available to the permanent government servant and government is only required to consider and examine the case as per the policy of the government. In support of his contention Mr.Bhatt has placed reliance upon the decision in the matter of State of Gujarat V/s Upendra P Barot reported in 2003(2) GLH 490. Mr.Bhatt has accordingly prayed that the letters patent appeal be allowed and the direction given by the learned single Judge in the special civil application be set aside by holding that in view of the government resolution which is in force and that the government has taken policy decision such protection is not available for appointment on compassionate ground as the deceased was working with the establishment as rojamdar majdoor and he was made permanent as per recommendation of the committee and he was not entitled for all benefits which are available to the permanent government servant.

Ms.Brahmbhatt learned advocate has supported the judgment under challenge. According to her, learned single Judge has also observed that the petitioner had approached for appointment on compassionate ground in the year 1995 and the said special civil application being S.C.A.no.7971/95 was decided in favour of the petitioner on 05.10.1995 and the respondent-state authority were directed to act as per government resolution dated 06.09.1989. Thereafter, the petitioner-mother had also filed S.C.A.no.4691/96 and the said petition was withdrawn on the statement being made by the advocate appearing for the petitioner that the petitioner-mother has no locus to file petition. Thereafter, the petition was filed by the petitioner in which earlier notice was issued indicating that the said petition will be finally disposed of. The learned Single Judge has in turn observed that while issuing rule in the said petition Mr.Gharania learned AGP has waived service of rule. As found from the petition, the petitioner has also annexed earlier petition filed before this court being SCA 7971/95 and while dealing with the said petition on 05.10.95, has allowed the said petition and observed that as the petitioner has made an application in prescribed

form and all the formalities are over, the direction was given that if the said application is not disposed of, the said application be disposed of on or before 31.12.95 and as per the direction given in the said petition, the petitioner was informed on 27.11.95 that in view of the direction given in the said petition and existing government rules, for seeking appointment on compassionate ground is not possible and your application will be processed as per rules and regulations. It is further found that even the Dy.Executive Engineer has under his letter dated 06.11.1995, forwarded proposal with the documents in favour of Executive Engineer and one of the documents shows that the Dy.Engineer has forwarded three copies of the order of making deceased Naranbhai Lakum permanent and the papers and the sanction order of granting pension in favour of deceased Naranbhai Lakum and said letter along with proposal was forwarded for consideration before the Executive Engineer. It is only thereafter the Executive Engineer has informed the petitioner under his letter dated 16.12.95 that the petitioner is not entitled for appointment on compassionate ground in view of the prevalent rules of the government and the petitioner has to approach again by filing this petition. As found from the reply affidavit filed by Shri P.S.Shah Dy.Executive Engineer in S.C.A.no.9998/96 he has averred that deceased Naranbhai was daily wager since 21.03.1963 and after completion of 10 years service as daily wager, he was taken on monthly pay basis from 20.03.1973 vide order dated 23.03.1992 and as per the government resolution dated 17.10.1988 he was eligible for leave on Sundays, 14 days casual leave including two days R.H. 30 days E.L. and 20 days half pay leave and he was eligible for pension and he was not getting all the benefits of a permanent and regular employee. Ms.Brahmbhatt has accordingly, during her submissions, placed reliance upon the direction given by the learned single Judge on the basis of the earlier direction given by the High Court while disposing of S.C.A.no.7971/95 dated 05.10.1995 and when the learned Single Judge has given direction to the appellant-authority in light of the resolution of the government dated 06.09.198, this court will not interfere with such order and according to her the letters patent appeal be dismissed.

In light of the contentions raised before us and on considering the judgment under challenge and while referring the order of admission by considering that another petition was not entertained and it is found that a contrary view was taken while disposing of S.C.A.no.11723/94 on 22.12.95, reading the order it is

transpired that the said petition was disposed of in absence of the learned advocate for the petitioner and the court has considered only the submissions of Mr.Gharania who appeared for the government. In that petition the court has observed that it was not in dispute that the father of the petitioner was working on daily wages as board operator and father of the petitioner had died on 25.02.1991 and the petitioner has given application for appointment on compassionate ground on 14.02.1992. Mr.Gharania learned A.G.P. has submitted in the said petition that there is no provision or any rule or regulation or resolution of the government to give appointment on compassionate ground to the dependant of an employee working on daily wages who died while in service and accordingly the petition filed by the petitioner was dismissed and rule was discharged. The said petition was finally disposed of without hearing the advocate for the petitioner. In our view the said decision was not at all applicable in the facts of this case as according to us earlier when the petitioner has filed petition being S.C.A.7971/95 the court has in turn allowed the petition and directed the authority to decide the application as all the formalities of submitting the application in prescribed form is over. The Dy.Executive Engineer has in turn as per his proposal dated 06.11.1995, forwarded the document which shows that the petitioner's father deceased Naranbhai Lakum was made permanent and two documents were forwarded which shows that deceased Naranbhai was made permanent and the order passed regarding granting family pension. The learned single Judge has in turn therefore observed that the letter issued on 06.11.1995 indicate genuineness and correctness which was not disputed by the deponent in his affidavit in reply and accordingly the direction was given to consider the case in light of the government resolution dated 06.09.1989. No person in the world is immortal and it is a fact that a person who is born has to die. However, a person who entered in Government service in any capacity is not required to think for his death. However, death is certain. A government servant who entered in government service in whatever capacity is entitled to get all benefits as per rules and regulations and the government has, considering the situation that government servant who died during service had made rules or guidelines for giving benefits of heirs of the deceased by appointing them by providing government service on compassionate grounds. Considering this background, when deceased Naranbhai had died, the said deceased Naranbhai was made permanent. But according to government, some of the benefits are not available to such employees those who are made permanent in view of

the recommendation of the committee for making permanent those rojamdar who are working in the government establishment. The proposal submitted by the Dy.Executive Engineer in favour of the Executive Engineer clearly indicates that while forwarding the proposal of the petitioner for giving compassionate appointment, three copies of the order issued in favour of the deceased Naranbhai making him permanent were forwarded and further the order regarding pension granted after the death of Naranbhai. In light of the admission of the appeal and in light of the order passed by another Judge dated 22.12.95 while deciding S.C.A.11723/94, there was no contrary order and in our view the learned Single Judge was right by allowing the petition by giving direction to the government to consider the application of the petitioner for his appointment on compassionate ground in accordance with the relevant government resolution dated 06.09.1989 in view of the earlier order passed while disposing of S.C.A.7971/95 on 05.10.95. In our view, there is no substance in this appeal and appeal deserves to be dismissed. Accordingly the direction given by the learned Single Judge is to be implemented as expeditiously as possible by 31.12.2003 sympathetically in view of the fact that the petitioner's father who has served the government for many years i.e. from 1963 who died during service on 06.09.1990 and his son the present petitioner has applied for appointment on compassionate ground. Appeal is accordingly dismissed with no costs. As the civil application is already disposed of, the interim relief, if any, is hereby vacated.

( D.K.TRIVEDI, J )

( SHARAD D DAVE, J )